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| EXAMINER | |
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* DAVID ANDREW THOMAS, EDWARD H. PERRY, SUJATA BANERJEE, PUNEET SHARMA, AMY CSIZMAR DALAL, and SUNG-JU LEE

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Appeal 2009-006643
Application 10/678,936
Technology Center 2400

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Before ST. JOHN COURTENAY III, STEPHEN C. SIU, and DEBRA K. STEPHENS, *Administrative Patent Judges.*

SIU, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-10, 28-37, and 55-58. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### *Invention*

The invention relates to methods and systems for downloading digital information (Spec. 1).

Claim 1 is illustrative:

> 1. A method for transferring files, comprising:
>
> receiving a request to transfer a file;
>
> locating the requested file stored in a memory;
>
> computing a unique identifier corresponding to the requested file;
>
> choosing a first key, $K_1$, wherein the first key, $K_1$, is unique to the particular transfer of the requested file;
>
> encrypting the first key, $K_1$, and the unique identifier with a second key, $K_2$, to generate a first value;
>
> encrypting the requested file with the first key, $K_1$, to generate a second value; and
>
> transferring the first and second values.

### *References*

The Examiner relies on the following references as evidence in support of the rejection:

| | | |
|---|---|---|
| Van Der Vleuten | US 2002/0076043 A1 | Jun. 20, 2002 |
| Higashi | US 2002/0107806 A1 | Aug. 8, 2002 |
| Carpentier | US 6,807,632 B1 | Oct. 19, 2004 (filed Jan. 21, 1999) |

| | | |
|---|---|---|
| Bennett | US 6,963,923 B1 | Nov. 8, 2005 (filed Feb. 10, 1997) |
| Lyle | US 7,242,766 B1 | Jul. 10, 2007 (filed Nov. 21, 2001) |

*Rejections*

Claims 1-4, 7, 28-31, and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Higashi and Lyle.

Claims 5, 6, 32, and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Higashi, Lyle, and Bennett.

Claims 8-10 and 35-37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Higashi, Lyle, and Carpentier.

Claims 55-58 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Higashi, Lyle, and Van Der Vleuten.

## ISSUE

Appellants submit that neither Higashi nor Lyle teaches or suggests "using Appellants' claimed key $K_2$ to encrypt a first key $K_1$ having the features recited in claims 1 and 28" (App. Br. 8).

*Issue*: Did the Examiner err in finding that Higashi and Lyle would have taught or suggested choosing a first key, wherein the first key is unique to a particular transfer of a requested file and encrypting the first key and a unique identifier with a second key to generate a first value?

## FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence:

1. Higashi discloses a content information generation unit that "generates the content information (LT) . . . . the content

information generation unit 170 acquires the content key 130 corresponding to the content ID . . . and generates LT which includes this content key" (¶ [0080]).

2. Higashi discloses that "LT 600 generated by the content information generation unit 170 is comprised of the LT header 610" (¶ [0111]).
3. Higashi discloses that "LT header 610 is comprised of . . . content ID 614 that shows a content ID of the content associated with this LT" (¶ [0112]).
4. Higashi discloses that a "content information encryption unit 175 encrypts the content information [LT] . . . . [u]sing public key cryptography, [content information LT] may be encrypted by the public key of the user" (¶¶ [0081-83]).
5. Lyle discloses a movie delivery transaction in which

> the consumer sends . . . a request to view the movie . . . . the request is received by content authority 16 . . . . if the request is approved, content source 11 is informed . . . . In response to being informed of an approved request, content source 11 . . . send[s] a packaged version of the requested content to receiver 15 . . . .
>
> (Col. 21, l. 63 to col. 22, l.28).

6. Lyle discloses that the "packaged content is encrypted in a manner that requires a session key (that varies from one transaction to the next) in order to decrypt it" (col. 22, ll. 39-42).

## PRINCIPLES OF LAW

### *Claim interpretation*

"In the patentability context, claims are to be given their broadest reasonable interpretations. . . . [L]imitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citations omitted).

### *Obviousness*

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966). One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

## ANALYSIS

Appellants argue the claimed encryption of a first key by a second key is not taught or suggested by the prior art. Based on Appellants' arguments in the Appeal Brief, we will decide the appeal with respect to issue 1 on the basis of claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Higashi teaches the generation of content information that includes a content key (FF 1). The content information also includes a header (FF 2) that includes a content ID (FF 3). Higashi also teaches encryption of the content information using public key cryptography, where the content information may be encrypted by a user's public key (FF 4). Lyle teaches a requested file (requested content) that is delivered to a receiver as packaged

content within a transaction (FF 5). Lyle also teaches encrypting the packaged content in a manner that requires a session key that varies from one transaction to the next (FF 6). Therefore, the combination of Higashi and Lyle would have taught or suggested choosing a first key (content or session key), wherein the first key is unique to a particular transfer of a requested file (varies from one transactions to the next) and encrypting the first key (the content or session key included in the content information) and a unique identifier (a content ID included in the content information header) with a second key (user's public key) to generate a first value (encrypted data).

Appellants argue that Lyle's teachings and suggestions are inapplicable because "the session key of Lyle would have been used to replace the content key and the public key of Higashi" (App. Br. 9). However, the Examiner relies on Lyle for the limitation of a key that is unique to a particular transfer of a requested file (Ans. 3). The Examiner relies on Higashi for the other limitations (Ans. 2-3). Appellants cannot demonstrate nonobviousness by attacking Lyle alone when the rejections are based on the combined teachings of Lyle and Higashi.

Appellants further argue that "Appellants' claimed 'first key, K1' . . . will remain valid over multiple transactions with different servers" (App Br. 9). However, the claim requires that "first key, $K_1$, is unique *to the particular transfer* of the requested file" (emphasis added). The limitation, given a reasonably broad interpretation, encompasses a particular transfer that takes place within a single session. As discussed, Lyle teaches sending a requested file within a transaction (FF 5), where an encryption key used in

delivering package content varies from one transaction to the next (FF 6). Thus Lyle teaches a first key (encryption key) that is unique (that varies) to a particular transfer (from transaction to transaction, where each transaction can include a transfer) of a requested file.

## CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we find no evidence persuasive of error in the Examiner's finding that Higashi and Lyle would have taught or suggested choosing a first key, wherein the first key is unique to a particular transfer of a requested file and encrypting the first key and a unique identifier with a second key to generate a first value.

For at least these reasons, we are not persuaded of error with respect to this issue in the Examiner's 35 U.S.C. § 103(a) rejections of claims 1-4, 7, 28-31, and 34. Appellants did not argue claims 5, 6, 32, and 33 rejected for obviousness over Higashi, Lyle, and Bennett; claims 8-10 and 35-37 rejected for obviousness over Higashi, Lyle, and Carpentier; and claims 55-58 rejected for obviousness over Higashi, Lyle, and Van Der Vleuten separately, but instead relied on the arguments set forth for claim 1 (App. Br. 9-10). Accordingly, we are not persuaded of error in the Examiner's 35 U.S.C. § 103(a) rejections of claims 5, 6, 8-10, 32, 33, 35-37, and 55-58.

## DECISION

We affirm the Examiner's decisions rejecting claims 1-10, 28-37, and 55-58 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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